



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA-HQ-OW-2012-0186; FRL-9924-94-OW]

State of Washington Underground Injection Control (UIC) Program Revision Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is taking direct final action to approve the State of Washington Underground Injection Control (UIC) Program revisions as required by rule under the Safe Drinking Water Act (SDWA). The Agency determined that the state's program revisions are consistent with the provisions of the SDWA and are as stringent as all applicable federal regulations to prevent underground injection activities that endanger underground sources of drinking water. The state revised its UIC Class V Program regulations and transferred oversight authority from the Department of Ecology to the Energy Facility Site Evaluation Council to issue UIC permits at energy facilities.

DATES: This rule is effective on **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless EPA receives adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives adverse comment, the Agency will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. For judicial purposes, EPA promulgates this final rule as of **[INSERT DATE 90 DAYS AFTER**

DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2012-0186, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- Email: OW-Docket@epa.gov.
- Mail: State of Washington; Underground Injection Control (UIC) Program Primacy, U.S. Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
- Hand Delivery: Water Docket, EPA Docket Center (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave, NW, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OW-2012-0186. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> website is an “anonymous

access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All supporting documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC; and U.S. Environmental Protection Agency, Region 10, Library, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. The Water Docket Facility Public Reading Room in Washington, DC, is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Public Reading Room telephone number is (202) 566-1744 and the telephone number of the Water Docket is (202) 566-2426. The Region 10 Library is open from 9:00 a.m. to 12:00 p.m. and 1:00

p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The telephone number for the library is (206) 553-1289.

FOR FURTHER INFORMATION CONTACT: Lisa McWhirter, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 564-2317; fax number: (202) 564-3754; email address: mcwhirter.lisa@epa.gov or Peter Contreras, Ground Water Unit, U.S. Environmental Protection Agency, Region 10, Suite 900 M/S OCE-082, 1200 Sixth Avenue, Seattle, Washington 98101; telephone number (206) 553-6708; fax number: (202) 553-6984; email address: contreras.peter@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why is EPA Issuing a Direct Final Rule?

EPA published this rule without a prior proposed rule because the Agency views this action as noncontroversial and anticipates no adverse comment. However, in the “Proposed Rules” section of this Federal Register, EPA published a separate document that serves as the proposed rule if the Agency receives adverse comments on this direct final rule. The Agency will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, the Agency will publish a timely withdrawal in the Federal Register, informing the public that this direct final rule will not take effect. The Agency will then address all public comments in any subsequent final rule based on the proposed rule.

II. Does This Action Apply to Me?

Regulated Entities

Category	Examples of Potentially Regulated Entities	North American Industry Classification System
State, Local, and Tribal Governments	State, local, and tribal governments that own and operate Class I, II, III, IV, and V injection wells located within the state	924110
Industry	Private owners and operators of Class I, II, III, IV, and V injection wells located within the state	221310
Municipalities	Municipal owners and operators of Class I, II, III, IV, and V injection wells located within the state	924110

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. Legal Authorities

EPA approves the State of Washington Underground Injection Control (UIC) Program revisions, as required by rule under the SDWA, to prevent underground injection activities that endanger underground sources of drinking water. The state revised its UIC Class V Program regulations and transferred oversight authority from the Department of Ecology to the Energy Facility Site Evaluation Council to issue UIC permits at energy facilities. Accordingly, the

Agency codifies the state regulations in the Code of Federal Regulations at 40 CFR part 147 under the authority of the SDWA, sections 1422 and 1450, 42 U.S.C. 300h-1 and 300j-9.

The Agency's approval is based on a legal and technical review of the state's program revision application as directed at 40 CFR part 145 and the requirements for state permitting and compliance evaluation programs, enforcement authority and information sharing at 40 CFR parts 124 and 144, to determine that the state's revisions are as stringent as all applicable federal regulations. EPA oversees the state's administration of the UIC program; part of the Agency's oversight responsibility requires quarterly reports of non-compliance and annual UIC performance reports pursuant to 40 CFR 144.8. The Memorandum of Agreement between EPA and the state, signed by the Regional Administrator on February 15, 2011, provides the Agency with the opportunity to review and comment on all permits. EPA continues to administer the UIC Class V Program on Indian lands located within the state.

IV. Washington's Application

A. Public Participation Activities Conducted by EPA

On March 8, 2013, EPA published notice of Washington's Underground Injection Control Program Revision application in the Federal Register (78 FR 14951), the *Seattle Times* on March 6, 2013, and in the *Yakima Herald* on March 7, 2013. The local notices provided for a public hearing on April 8, 2013. No one attended the public hearing and no public comments were received.

B. Incorporation by Reference

This direct final rule amends 40 CFR part 147 and incorporates by reference EPA-approved state statutes and regulations. The provisions of the State of Washington's Code that contain standards, requirements and procedures applicable to owners or operators of UIC well classes I, II, III, IV, and V are incorporated by reference into 40 CFR part 147. Any provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to section 1423 of the SDWA and 40 CFR 147.1(e).

In order to better serve the public, the Agency reformatted the codification of EPA-approved Washington SDWA section 1422 UIC Program Statutes and Regulations for Well Classes I, II, III, IV, and V. Instead of codifying the Washington Statutes and Regulations as separate paragraphs, the Agency now codifies a binder that contains EPA-approved Washington Statutes and Regulations for Well Classes I, II, III, IV, and V. This binder is incorporated by reference into 40 CFR part 147 and available at <http://www.regulations.gov> in the docket for this rule. The Agency also codifies a table listing EPA-approved Washington Statutes and Regulations for Well Classes I, II, III, IV, and V in 40 CFR part 147.

V. Statutory and Executive Order Reviews

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. *Paperwork Reduction Act*

This action does not impose any new information collection burden. EPA determined that there is no need for an Information Collection Request under the Paperwork Reduction Act because this direct final rule does not impose any new federal reporting or recordkeeping requirements. Reporting or recordkeeping requirements are based on the State of Washington UIC Regulations, and the state is not subject to the Paperwork Reduction Act. However, OMB has previously approved the information collection requirements contained in the existing regulations (40 CFR parts 144-148) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control number 2040-0042. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action does not impose any new requirements on any regulated entities. It simply codifies the State of Washington's Class V regulations, which are at least as stringent as the federal regulations. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1521-1538. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132 - Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 as explained in section V.C. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the Agency has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it approves a state action as explained in section V.C.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect

Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because the rule does not affect or change the level of protection provided to human health or the environment.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 147

Environmental protection, Incorporation by reference, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: March 30, 2015.

Gina McCarthy,
Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 147--STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300h *et seq.*; and 42 U.S.C. 6901 *et seq.*

2. In §147.2400:

- a. Revise the introductory text in paragraph (a).
- b. Remove paragraphs (a)(1) through (4).
- c. Revise paragraph (c)(1).
- d. Add paragraph (c)(5).

The revisions and addition read as follows:

§147.2400 State-administered program—Class I, II, III, IV, and V wells.

(a) *Incorporation by reference.* The requirements set forth in the state statutes and regulations cited in the binder entitled “EPA-Approved Washington SDWA section 1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, II, III, IV, and V,” dated January 2014, and Table 1 to paragraph (a) of this section are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Washington. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the State of Washington regulations that are incorporated by reference in paragraph (a) of this section may be inspected at the U.S. Environmental Protection Agency, Region 10, Library, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101; Water Docket, EPA Docket Center (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460; and the National Archives and Records Administration (NARA). If you wish to obtain materials from the EPA Regional Office, please call (206) 553-1289; for materials from a docket in the EPA Headquarters Library, please call the Water Docket at (202) 566-2426. For information on the availability of

this material at NARA, call (202) 741-6030, or go to <http://www.archives.gov/locations/>.

Table 1 to paragraph (a) EPA-Approved Washington SDWA Section 1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, II, III, IV, and V			
State citation	Title/subject	State effective date	EPA approval date ¹
Revised Code of Washington Sections 90.48.010 – 90.48.906	Water Pollution Control	February 3, 2006	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>
Revised Code of Washington Section 43.21A.445	Departments authorized to participate in and administer federal Safe Drinking Water Act – Agreements with other departments	February 3, 2006	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>
Washington Administrative Code Sections 173-218-010 – 173-218-130	Underground Injection Control Program	June 19, 2008	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>
Washington Administrative Code Sections 344-12-001 – 344-12-295	Oil and Gas Conservation Committee, General Rules	June 29, 1988	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>
Washington Administrative Code Sections 173-160-010 – 173-160-990	Minimum Standards for Construction and Maintenance of Wells	December 19, 2008	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>

¹In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** document cited in this column for the particular provision.

(c)(1) The Memorandum of Agreement between EPA Region X and the Washington

Department of Ecology, signed by the EPA Regional Administrator on February 15, 2011.

(5) Memorandum of Agreement between the Washington Department of Ecology and the Energy Facility Site Evaluation Council, Related to the Underground Injection Control Program for the State of Washington, signed March 19, 2009.

[FR Doc. 2015-07757 Filed: 4/3/2015 08:45 am; Publication Date: 4/6/2015]